

**STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION**

**Amend Sections 163 and 163.5**  
**Title 14, California Code of Regulations**  
**Re: Herring Fishery**

- I. Date of Initial Statement of Reasons: May 11, 2002
- II. Date of Pre-adoption Statement of Reasons: July 29, 2002
- III. Date of Final Statement of Reasons: September 3, 2002
- IV. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: June 20, 2002  
Location: South Lake Tahoe, CA
  - (b) Discussion Hearing: Date: August 2, 2002  
Location: San Luis Obispo, CA
  - (c) Adoption Hearing: Date: August 30, 2002  
Location: Oakland, CA

- ## V. Update:

No modifications were made to the originally proposed language in the Initial Statement of Reasons. However, an error made in the proposed opening season day and date for Tomales Bay in the Informative Digest was corrected in the Pre-adoption Statement of Reasons to match the proposed regulation.

The Fish and Game Commission approved all proposed regulatory changes contained herein at its meeting in Oakland on August 30, 2002.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

No public comments, written or oral, were received during the public comment period.

- ## VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: See Draft Supplemental Environmental Document - Pacific Herring Commercial Fishing Regulations.
- (b) No Change Alternative: See Draft Supplemental Environmental Document - Pacific Herring Commercial Fishing Regulations.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed changes regarding seasons, quota allocations, mesh size study individual quota provisions, coordinates for permit areas and fishing boundaries, and minor editorial changes are not expected to have a significant statewide adverse economic impact on businesses.

The average quota over the history of the San Francisco Bay roe herring fishery (30 seasons) is 6,104 tons. The average quota over the most recent five years has been lower (5-season average is 4,924 tons). The proposed quota (3,540 tons) is 42 percent less than the long term average,

and thus, in comparison to the long-term average, the proposed decrease in the fishing quota for San Francisco Bay will have a negative impact on some individual fishermen in the short-term. However, the proposed quota reflects appropriate quota levels relative to current population trends. Relative to the reduced quota in 2001-02, the proposed quota for San Francisco Bay represents a decrease in quota that will have a significant but unquantifiable negative short-term impact on some individual fishermen. Despite quota allotments, there is no guarantee that the quota will be caught. In the 1997-98 season, for example, only 20 percent of the quota was caught. The entire quota was caught in the 1998-99 and 2000-01 seasons, but in the 1999-2000 season, only 62 percent of the quota was caught. The proposed gill net quota for San Francisco Bay represents a 14 percent decrease from last year's quota (4,476 tons), and a 6 percent increase relative to last year's catch (3,287 tons). The proposed decrease in the San Francisco Bay quota (compared to the 2001-02 season quota) will have a significant, but unquantifiable, negative short-term impact on herring buyers and possibly on some small businesses that provide goods and services to the fishing fleet and buyers. Losses in revenue will depend on the ex-vessel price for the season and the quantity and quality of an individual's landings. The decreased revenues for the ten permittees who transfer their quota to the herring eggs on kelp fishery are significant but unquantifiable (compared to the 2001-02 season quota). Any negative impacts relative to the long-term average quota are balanced in the long-run by years when resource abundance and fishing quotas are high.

The proposed action for the Tomales Bay herring fishery will not have a significant statewide adverse economic impact affecting business, which includes the ability of California businesses to compete with businesses in other states. The proposed initial quota of 300 tons is not expected to have a significant negative impact on individual fishermen or herring buyers. In recent years, the initial quota has been based on 10 percent of the previous seasons spawning biomass. The proposed initial catch quota of 300 tons is conservatively based upon 4.1 percent of the estimated spawning biomass from the 2001-02 season. The initial quota is set at just 4.1 percent of the spawning biomass this year, as opposed to 10 percent, because high exploitation rates have sometimes occurred after high biomass seasons. The Department believes that a proactive and conservative initial quota for the 2002-03 season may prevent a possible over-exploitation of the Tomales Bay herring population. The goal is to help ensure a stable spawning population for the future.

When compared with the commercial catch over the past ten years, the Tomales Bay catch exceeded 300 tons only twice (1995-96 and 2001-02 seasons). The commercial catch for the 2001-02 season was 354 tons,

which exceeded the season's initial quota of 300 tons, but was only 71 percent of the in-season increased quota of 500 tons. The lower initial quota based on 4.1 percent is unlikely to have an adverse economic impact. The proposed regulations contain provisions for increasing the quota in-season if spawning escapement goals are achieved. The provision for in-season quota increases is a valuable fisheries management tool that provides flexibility in managing the fishery based on the size of the current spawning population. The provision supports the conservation of the resource and realizes the possible economic benefit of allowing a higher catch, if the resource is abundant enough to withstand the fishing pressure. The proposed action will have an unquantifiable impact on some small businesses that provide goods and services to the fleet. In the long term, these impacts are balanced by the positive economic returns that accrue in those years when resource abundance and fishing quotas are high.

The proposed application of violation points, currently assigned to a permittee not aboard vessel during fishing operations in Section 163.5, to a Department-approved crew member temporarily serving in his or her place aboard the vessel, is not expected to have an adverse economic impact.

The proposed addition of form number is being made for the sake of clarity and will not have an economic impact.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

## Updated Informative Digest/Policy Statement Overview

**The Informative Digest from the Initial Statement of Reasons contained an error in the proposed opening day and date of the Tomales Bay herring fishery. This was amended in the Updated Informative Digest of the Pre-Adoption Statement of Reasons, to correct the opening day and date to match the proposed regulation text. No other changes to the text or regulations have been made.**

**Modifications to the original text are identified herein with strike-through of original text and underline of new text.**

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulatory changes will establish fishing quotas by area for the 2002-03 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. The proposed fishing quota in San Francisco Bay is 3,540 tons (10 percent of the 35,400-ton estimated spawning biomass for the 2001-02 season). An initial 300-ton fishing quota (4.1 percent of the 2001-02 estimated spawning biomass of 7,243 tons) is proposed for Tomales Bay with provisions to increase the quota in season if escapement goals are achieved by February 15, 2003. This season, the recommendation for in-season increases is as follows:

- If the spawning escapement is more than 3,000 tons, increase the quota to 400 tons.
- If the spawning escapement is more than 4,000 tons, increase the quota to 500 tons.

The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2002-03 season only, shall be no less than 2 inches or greater than 2 ½ inches. The proposed one-year continuation of the regulation, originally approved for the 2000-01 and 2001-02 seasons only, will allow the Department to continue to evaluate the effect of reduced mesh length on the size and age composition of herring caught in 2 inch mesh gill nets.

Other changes relating to the Department of Fish and Game (Department) herring season dates, permit suspensions, and minor editorial changes are recommended to improve the clarity of the regulations or provide for the efficient harvest and orderly conduct of the fishery and for

the protection of the resource. The following is a summary of those proposed changes in sections 163 and 163.5, Title 14, CCR.

- Set the dates of the roe herring fisheries in San Francisco Bay from 5:00 p.m. on Sunday, December 1, 2002 to noon on Friday, December 20, 2002 ("DH" gill net platoon only), and from 5:00 p.m. on Sunday, January 5, 2003 to noon on Friday, March 14, 2003.
- Set the dates of the roe herring fishery in Tomales Bay from 5:00 p.m. on ~~Thursday, December 27, 2002~~ **Sunday, December 29, 2002** until noon on Tuesday, December 31, 2002, and from noon on Sunday, January 5, 2003 to noon on Friday, March 7, 2003.
- Correct existing latitude/longitude coordinates for position references, and add latitude/longitude coordinates to existing position references that do not provide associated coordinates.
- Clarify that the violation points assigned for failure of a permittee to be aboard the vessel during herring fishing operations also apply to a permittee's Department-authorized temporary substitute.
- Revise the individual quota provisions for permittee's participating in a mesh size study in San Francisco Bay to 0.5 percent of the sac roe quota for each platoon to which a permittee is assigned.
- Increase the maximum number of permittee's that may participate in a mesh size study in San Francisco Bay from three to six.
- Transfer 10 tons of quota from the underutilized herring fresh fish fishery to the gill net fishery for use in a gill net mesh size study, for the 2002-03 season only.
- Make minor editorial revisions.

**The Fish and Game Commission approved the proposed regulatory changes contained herein at its meeting in Oakland on August 30, 2002.**

## **PROPOSED REGULATORY CHANGES TO SECTIONS 163 AND 163.5, TITLE 14, CCR: HARVEST OF HERRING**

### **Section 163. Harvest of Herring.**

Herring may be taken for commercial purposes only in those areas and by those methods specified in subsections (f)(1) and (f)(2) of this section under a revocable permit issued to an individual on a specified fishing vessel by the department. Transfer of permits from one boat to another may be authorized by the department upon written request by the permittee, accompanied by a copy of the current commercial boat registration of the new vessel. The fee for any approved transfer or substitution of a permit pursuant to paragraph one shall be \$50 for any request received by the department after the issuance date of November 15. The \$50 transfer fee must be received in the department's San Francisco Bay Area Marine Region office no later than five working days after written approval of any boat transfer or permittee substitution. Any permittee denied a transfer pursuant to paragraph one of this section may request a hearing before the commission to show cause why his request should not be denied. Permittees shall have their permit in their possession (including the attachment of any changes approved by the department after the permit is issued) and shall be aboard the vessel named on their permit at all times during herring fishing operations, except that the ~~Department~~department may authorize a permittee to have a crew\_member temporarily serve in his or her place aboard the vessel during a season. Requests for temporary permittee substitution must be submitted in writing by the permittee, accompanied by a copy of the temporary substitute's current California commercial fishing license. Two permits may be jointly fished on a single vessel upon approval of a written request by both permittees to the department. A permittee may simultaneously fish his or her own permit and a permit temporarily transferred to him or her on a single vessel within the same fishing group. A permittee serving as a temporary substitute on a permit while simultaneously fishing his or her own permit on a single vessel in the same fishing group shall incur the same penalties on his/her permit for all violations as those incurred against the permit for which he/she is serving as temporary substitute as prescribed in these regulations and in Section 163.5, Title 14, CCR. A person may not serve as a temporary substitute on more than one permit simultaneously on a single vessel in the same fishing group. Any request received by the department from November 1 to November 15 to transfer boats or substitute a permit or to simultaneously fish two permits on a single vessel shall be processed for approval by the department after the issuance date of November 15.



(a) Qualifications of Permittee. To obtain a permit to take herring a person shall:

(1) Be a currently licensed California commercial fisherman. When a permit is held in partnership (pursuant to the provisions of Section 8552.6 of the Fish and Game Code), both partners must be currently licensed California commercial fishermen.

(2) Have been a permittee during the previous herring season.

(3) Qualify for an odd- or even-numbered permit as specified in subsection (c)(1)(B).

(4) Qualify for ~~an~~ a "DH" gill net permit as specified in subsection (c)(1)(C).

(5) Have submitted lists of crewmembers assisting in fishing operations as specified in subsections (e)(2) of these regulations, release of property forms and payment for all herring landed in excess of an established individual permit quota as specified in subsection (e)(5) of these regulations, and all fees from prior seasons.

(6) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his or her permit should not be denied. Applicants disqualified under subsections (c)(1)(B) or (c)(1)(C) will be granted a hearing if the number of points claimed would have placed them in the point category from which new permits will be issued.

(b) Permit Applications. Each applicant for a herring permit shall:

(1) Completely fill out and submit the required department application form (available at the department's San Francisco Bay Area Marine Region or Eureka office). No person shall submit more than one application per season. Applications shall include the filing fee, as specified in section 8550.5 of the Fish and Game Code, and copies of the current California certificate of boat registration and commercial fishing license of the applicant.

(2) Permittees will be issued permits for the same area and gear type they held during the previous season. In San Francisco Bay, round haul permittees who transferred gear type to gill net were designated as CH-(600-642)-SF permittees. For every conversion of gear type to gill net by a round haul permittee, the amount of herring allocated to each round haul permittee was transferred from the round haul quota to the gill net quota. For each round haul permit converted prior to October 6, 1995, fishing with gill net gear is authorized in two of the following fishing periods: odd-numbered permits, even-numbered permits, or December herring ("DH") permits. The permit holder of a converted round haul ("CH") permit is permanently assigned to the two fishing groups ("DH", odd-, or even-numbered permit) he or she designated. For every conversion of gear type to gill net by a round haul permittee after October 6, 1995 but before October 2, 1998, the permit is permanently in the two fishing groups ("DH", odd-, or even-numbered permit) assigned by the department. All remaining round haul permits as of October 3, 1998 were

converted to gill net permits and assigned to a single gill net group.

Upon transfer, the department assigned each converted "CH" permit to a single gill net group ("DH", odd numbered, or even-numbered permit) as designated by the permit holder. A round haul herring permit, held in partnership prior to November 3, 1994 and subsequently converted to a "CH" permit prior to October 2, 1998, ~~was~~ is not subject to assignment to a single gill net group upon transfer to one of the partners.

(3) Submit the required application form for Humboldt, Tomales or San Francisco bays, or Crescent City in time for it to be received at the department's San Francisco Bay Area Marine Region office, prior to 5:00 p.m. on the first Friday of October. Any application received or postmarked after the above deadline will not be eligible for consideration for the current California herring season.

(4) Subsections (a)(2) and (b) do not apply to permits issued for taking herring in ocean waters or to fresh fish market permits.

(c) Permits.

(1) Permits to take herring for roe purposes will be issued by the department beginning November 15. Permits will be sent by certified mail, return receipt requested, to the permittees. Not more than three permits shall be issued for Crescent City and not more than four permits shall be issued for Humboldt Bay.

No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit area until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 232. No new "DH" permits shall be issued until the maximum number of permits is less than 116. The permittee shall be responsible for all crew members acting under his or her direction or control to assure compliance with all Fish and Game regulations as provided in this section, or in the Fish and Game Code, relating to herring.

(A) The total number of gill net permits issued to individuals not qualifying under subsection (a)(2) shall be the difference in number of permittees meeting such qualifications and the total number of gill net permits authorized by the commission in subsection (c)(1).

(B) Individuals not qualifying under subsection (a)(2) will be eligible to apply for any available odd- or even-numbered gill net permits provided they are a currently licensed California commercial fisherman.

(C) Individuals not qualifying and receiving permits under subsections (a)(2) or (c)(1)(B) will be eligible to apply for any available "DH" gill net permits provided they are a currently licensed California commercial fisherman.

(D) In the event that the number of eligible applicants qualifying under subsections (c)(1)(B) or (c)(1)(C) exceeds the available permits, a lottery shall

be held. Preferential status in the lottery will be given under the following conditions:

1. One point (maximum of ten) for each year an applicant has held a valid California commercial fishing license in the previous twelve years (prior to the current license year). A point shall be granted only if the applicant's name appears on the department's master file of commercial licensees or if the applicant presents a valid commercial fishing license or verifiable receipt for the year claimed.
  2. Five points for one year of service as a paid crewmember in the herring fishery, three points for a second year of service as a paid crewmember, and two points for a third year as a paid crewmember, beginning with the 1978-79 herring fishing season, not to exceed a maximum of 10 points.
  3. Preference points awarded for participation in the herring fishery shall only be granted if the applicant's name has been filed with the department pursuant to subsection (e)(2) of these regulations, and is supported by documentation demonstrating proof of payment for service on a crew in the California herring roe fishery as specified in section 8559 of the Fish and Game Code.
  4. Permits will be issued predicated on the total number of points accrued by an applicant, beginning with those applicants who accrue the maximum number of points and working in descending order from this maximum. A drawing will be held to allocate the remaining permits when the permits available are exceeded by the number of applicants in a particular point category.
- (E) Preferential status points will not be given for participation on vessels with permits specified in subsections (c)(2) and (c)(3) of this section.
- (2) Fresh Fish Market. Ten permits will be issued to take herring for the fresh fish market in San Francisco Bay and five in Tomales Bay. See subsection 699(b) of these regulations for the fee for this permit. However, no permittee may take or possess herring except in the amount specified on a current daily market order, not to exceed 500 pounds, from a licensed fish dealer. Fresh fish market permits will be issued beginning November 1 at the department's San Francisco Bay Area Marine Region office. In the event there are more applicants than the specified number of available fresh fish permits, a lottery will be held to determine the permittees. Applicants may apply for only one bay. Fresh fish market permits shall be in force from November 2 through November 15 and April 1 through October 31.
- (3) Ocean Waters. Permits to take herring in ocean waters will be issued by the department at its offices in Monterey, the San Francisco Bay area and Eureka. See subsection 699(b) of these regulations for the fee for this permit. Herring taken under the authority of subsections (c)(2) and (c)(3) may not be sold for roe purposes.
- (d) Vessel Identification. The master of any boat engaged in taking herring

under these regulations shall at all times while operating such boat, identify it by displaying on an exposed part of the superstructure, amidship, on each side and on top of the house visible from the air, the herring permit number of that vessel in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently fixed to each side of the vessel.

(e) Monitoring of Herring.

(1) Herring taken for roe purposes may only be delivered to a person licensed pursuant to subsection (j) of these regulations.

(2) Within four weeks of the date an individual quota is reached, or within four weeks of the end of the season, the permittee shall submit to the department's San Francisco Bay Area Marine Region office a list of crewmembers assisting in fishing operations during the current herring season. The list shall include the full name and California commercial fishing license number of each crewmember. Gill net permittees shall notify the department's San Francisco Bay Area Marine Region office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.

(3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.

(4) It is unlawful to transfer herring or herring nets from one permittee to another or from one boat to another, or from one gear type to another except that, nonmotorized lighters may be used, provided they do not carry aboard any gear capable of taking herring, including net reels, and that the catches of not more than one permittee are aboard the lighters at any time. Permit vessels shall not serve as lighters for other permit boats. In San Francisco Bay a permittee and his/her gear must stay together when delivering fish to market. Except as specified in subsection (e)(6) of these regulations, all fish taken by gill nets shall be retained and landed. Gill net permit vessels may not be used to assist in herring fishing operations during their off-week.

(5) All herring landed in excess of any established permit quota shall be forfeited to the department by the signing of an ~~official release of property form~~ Release of Property form (FG-MR-674 (Rev. 5/02)), which is incorporated by

reference herein. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(6) Sturgeon, halibut, salmon, steelhead and striped bass may not be taken by or possessed on any vessel operating under the authority of these regulations. All sturgeon, halibut, salmon, steelhead and striped bass shall be returned immediately to the water.

(f) Methods of Take.

(1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and Game districts 12 and 13 and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W), to the easternmost point of the Sausalito ferry dock (37 degrees 51 minutes 30 seconds N, 122 degrees 28 minutes 40 seconds W); Tomales Bay is defined as the waters of district 10 lying south of a line drawn west, 252 degrees magnetic, from the western tip of Tom's Point (38 degrees 12 minutes 53 seconds N, 122 degrees 57 minutes 11 seconds W) to the opposite shore (38 degrees 12 minutes 44 seconds N, 122 degrees 57 minutes 42 seconds W); ocean waters are limited to the waters of districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in subsection (h)(6) of these regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint (41 degrees, 3947 minutes, 3007 seconds N, 124 degrees, 15 minutes, 16 seconds W) and Sister Rocks (41 degrees, 4639 minutes, 5931 seconds N, 124 degrees 08 minutes 43 seconds W).

(2) The use of round haul nets to take herring for roe purposes is prohibited. The use of round haul nets to take herring is prohibited except in ocean waters (as defined in subsection (f)(1) of these regulations).

(A) No permittee shall possess or fish more than a total of 65 fathoms (1 shackle) of gill net in San Francisco and Tomales bays. Said gill nets shall not exceed 120 meshes in depth. In Humboldt Bay and Crescent City Harbor, no permittee shall possess or fish in combination more than 150 fathoms of gill net. Fresh fish permittees shall not possess or fish more than 65 fathoms (1 shackle).

Set gill nets shall be anchored by not less than 35 pounds of weight at each end, including chain; however, at least one-half of the weight must be anchor. Gill nets shall be tended at all times in San Francisco Bay. Tended means the registered gill net permittee shall be in the immediate proximity, not exceeding one nautical mile, of any gill net being fished.

(B) In Tomales Bay, for the ~~2001-02~~ 2002-03 season only, the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 inches or greater than 2 1/2 inches, except that four permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than the size designated herein. The use of mesh size of no less than 2 inches or greater than 2 1/2 inches is designated for evaluation purposes by the department and shall revert to a mesh size of no less than 2 1/8 inches or greater than 2 1/2 inches following the ~~2001-02~~ 2002-03 season, unless otherwise designated herein. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2- 1/4 inches or greater than 2- 1/2 inches. In San Francisco Bay the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2- 1/8 or greater than 2- 1/2 inches, except that ~~three~~ six permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than 2 1/8 inches. The meshes of any gill net used or possessed by fresh fish permittees shall not be greater than 2 inches. Length of the mesh shall be the average length of any series of 10 consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the 10 meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while 10 meshes are suspended vertically under one-pound weight, from a single stainless steel peg or nail of no more than 5/32 inch in diameter. In Humboldt Bay and Crescent City Harbor, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 22 1/2 inches or greater than 25 inches. In Tomales Bay, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 20 inches or greater than 25 inches. In San Francisco Bay, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 21 1/4 inches or greater than 25 inches.

(C) No net shall be set or operated to a point of land above lower low water or within 300 feet of the following piers and recreation areas: Berkeley Pier, Paradise Pier, San Francisco Municipal Pier between the foot of Hyde Street and Van Ness Avenue, Pier 7 (San Francisco), Candlestick Point State Recreation Area, the jetties in Horseshoe Bay, and the fishing pier at Fort Baker. No net shall be set or operated within 70 feet of the Mission Rock Pier. In the Crescent City area and Humboldt Bay gill nets may be set or operated within 300 feet of any pier.

(D) No nets shall be set or operated in Belvedere Cove north of a line drawn

from the tip of Peninsula Point (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W) to the tip of Elephant Rock (southwest of Pt. Tiburon at 37 degrees 52 minutes 19 N, 122 seconds 27 minutes 03 seconds). Also, no gill nets shall be set or operated from November 15 through February 15 inside the perimeter of the area bounded as follows: beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, ~~43~~40 seconds W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5" buoy, flashing green 4s at 37 degrees, 44 minutes, ~~24~~23 seconds N, 122 degrees, 21 minutes, 36 seconds W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero at 37 degrees, 43 minutes, 44 seconds N, 122 degrees, 21 minutes, 26 seconds W) and then in a direct line northeasterly to the Anchorage #9 buoy "A" (Y"A" buoy, ~~yellow in color, flashing yellow 4s~~ at 37 degrees, 44 minutes, ~~48~~46 seconds N, 122 degrees, 19 minutes, ~~24~~25 seconds W) and then in a direct line northwesterly to the Alameda N.A.S. entrance buoy #1 (G"1" buoy, ~~green in color, flashing green 4s~~ at the entrance to Alameda Carrier Channel, 37 degrees, 46 minutes, ~~36~~38 seconds N, 122 degrees, 20 minutes, ~~24~~27 seconds W) and then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1" buoy, ~~green in color, flashing green 2.5s~~ at 37 degrees, 48 minutes, ~~12~~15 seconds N, 122 degrees, 21 minutes, ~~24~~23 seconds W) and then in a direct line southwesterly to the point of beginning- (Tower C of the Oakland Bay Bridge, at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W).

(E) No boats or nets shall be operated or set in violation of existing state regulations applying to the navigation or operation of fishing vessels in any area, including but not limited to San Francisco Bay, Tomales Bay, Humboldt Bay and Crescent City Harbor.

(F) Gill nets shall be marked at both ends with a buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such net is being fished. Buoys shall be lighted at both ends using matching white or amber lights that may be seen for at least a distance of 100 yards and marked at both ends with matching flags or markers or placards, all of rigid or non-collapsible material of the same color, on a staff at least 3 feet above the water at each end, bearing the herring permit number in contrasting 4-inch black letters.

(G) The use of explosives, seal bombs, or marine mammal deterrent devices in the herring fishery is prohibited inside the waters of San Francisco Bay during the herring season.

(H) All San Francisco Bay herring permittees or their temporary substitutes shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings, between the

hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.

(g) Quotas.

(1) Crescent City Area: The total take of herring in the Crescent City area for commercial purposes by use of gill net only shall not exceed 30 tons per season.

(2) Humboldt Bay: The total take of herring in Humboldt Bay for commercial purposes by use of gill net only shall not exceed 60 tons per season.

(3) Tomales Bay: The total take of herring for commercial purposes by use of gill net only shall be as follows:

(A) In Tomales Bay waters a fishing quota, not to exceed 300 tons, shall be permitted for the ~~2001-02~~2002-03 season. However, if spawning escapement, as determined by the department, reaches or exceeds 3,000 tons prior to February 15, the quota shall be increased as follows: 1) if the spawning escapement is more than 3,000 tons, the total take of herring shall not exceed 400 tons for the season; 2) if spawning escapement is more than 4,000 tons, the total take of herring shall not exceed 500 tons for the season.

(B) The total take of herring for the fresh fish market shall not exceed 10 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed ~~4,476~~3,540 tons for the ~~2001-02~~2002-03 season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): ~~4,456~~3,520 tons.

Tonnage shall be allocated to each fishing group ("DH", odd, and even) in proportion to the number of permits that are assigned to each fishing group minus the number of permits in each platoon that are suspended for the entire season. ~~No gill net permittee (designated by the department in writing participating in research sponsored by the department shall take more than 9.3 tons of herring for a single gillnet permit, or 18.6 tons of herring for a CH permit, per season. Each gill net permittee (designated by the department in writing) participating in research sponsored by the department shall be assigned an individual quota equal to 0.5 percent of the season gill net quota per assigned platoon, unless provided for pursuant to subsection (g)(4)(B) of these regulations.~~

(B) The total take of herring for the fresh fish market shall not exceed 20 tons per season, except that during the ~~2001-02~~2002-03 season only, 10 tons total may be transferred, in proportion determined by the department, to gillnet permittee(s) participating in research sponsored by the



department pursuant to subsection (g)(4)(A) of these regulations.

(5) Ocean Waters: Herring may not be taken for roe purposes.

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.

(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.

(3) San Francisco Bay: The season shall be from 5:00 p.m. on December 21 until noon on December 21, ~~2004~~20, 2002, and from 5:00 p.m. on January 25 until noon on March 22, ~~2002~~14, 2003.

(A) In San Francisco Bay, gill net permittees with even permit numbers and "CH" permittees assigned to the "even" fishing group shall be permitted to fish only on the following dates: January ~~6-14~~5-10, January ~~20-25~~19-24, February ~~3-8~~2-7, February ~~17-22~~16-21, March ~~3-8~~2-7, ~~March 17-22~~.

(B) In San Francisco Bay, gill net permittees with odd permit numbers and "CH" permittees assigned to the "odd" fishing group shall be permitted to fish only on the following dates: January ~~2-4~~12-17, January ~~13-18~~26-31, ~~January 27-February 1~~, February ~~10-15~~9-14, February ~~24-March 1~~23-28, March ~~10-15~~9-14.

(C) In San Francisco Bay, gill net permittees with "DH" permit numbers and "CH" permittees assigned to the "DH" fishing group shall be permitted to fish only on the following dates: December ~~2-7~~1-6, December ~~9-14~~8-13, December ~~16-21~~15-20. In the event permittees described under subsections (h)(3)(A) and (h)(3)(B) both reach their quotas pursuant to subsection (g)(4)(B), "DH" permittees, on notification by the department, may resume fishing operations until such group has reached the successive established termination date or quota.

(D) No more than ~~three~~six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from 5:00 p.m. on December 21 until noon on December 2120, and from 5:00 p.m. on January 25 until noon on March 2214.

(4) In Tomales Bay, the season shall be from 5:00 p.m. on December ~~26~~29 until noon on December ~~28~~31, and from ~~noon~~5:00 p.m. on January 25 until noon on March 87.

(5) Herring fishing in Tomales Bay and San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night.

(6) Ocean Waters: The season shall be from April 1 to October 31 for all authorized fishing gear except in districts 16 and 17 where the season shall be from April 1 to November 30.

(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(B), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.

(i) Any permit issued pursuant to this section may be suspended or revoked at any time by the commission for cause after notice and opportunity to be heard, or without a hearing upon conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his/her herring fishing privileges should be restored. A person whose herring permit has been revoked by the commission shall not participate in any herring fishery during the following season. A person whose herring permit has been suspended for the entire season by the commission shall not participate in any herring fishery during the season the permit is suspended. A person whose herring permit has been suspended for a period less than the entire season by the commission shall not participate in any herring fishery during the period that the permit is suspended. If a herring permit that had a temporary substitute is suspended by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season during the period that the permit is suspended. If a herring permit that had a temporary substitute is revoked by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season. If a herring permittee is convicted of a violation, or if the permit is suspended or revoked, due to the actions of a temporary substitute who is simultaneously fishing his or her own permit on a single vessel in the same fishing group, the person who was acting as the temporary substitute will receive the same penalty against his/her own permit as received by the permittee, pursuant to these regulations and Section 163.5, Title 14, CCR. For Category II violations prescribed in Section 163.5(f) against a permit due to the actions of a temporary substitute while simultaneously fishing his/her own permit, equal points or penalties shall be assigned to the permit owned by the temporary substitute.

(j) Herring Buyer's Permit. A holder of a current fish receiver's license shall obtain a permit to buy herring for roe purposes for each fishing area specified in subsection (f)(1) of these regulations and approved by the department. After approval of an application and payment of the \$750 filing fee (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable, nontransferable permit to buy herring for roe purposes may be issued subject to the following regulations:

(1) The permittee shall permanently mark all vehicles, containers or pallets with individualized serial numbers and predetermined tare weights.

The serial number and predetermined tare weight shall be permanently marked

in letters, and numerals at least 3 inches high on each side of vehicle container or pallet.

(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. A sample of herring for roe testing purposes shall be taken from every load. No herring shall be taken for testing purposes from a load that has not first been weighed and recorded.

(A) The landing receipt for each vessel must be completed and signed by both the herring permittee and a certified weighmaster or his/her deputy prior to commencing unloading operations of another vessel.

(B) The weighmaster or deputy filling out the landing receipt must include all information required by Fish and Game Code Section 8043 and shall sign the landing receipt with his/her complete signature. The weighmaster shall list on the landing receipt the number of fish in, and the weight of, each roe test for the landing reported on the receipt.

(C) All landing receipts that have not been delivered to the department must be immediately available to the department at the weigh station.

(D) A reasonable amount of herring will be made available by the herring buyer to the department, at no cost, for management purposes.

(3) Prior to weighing herring, each permittee shall have each weighing device currently certified and sealed by the County Division of Weights and Measures.

(4) Weight tally sheets shall be used when any load of fish is divided and placed into more than one container prior to the completion of the landing receipt. Weight tally sheets shall include the time unloading operations begin.

(A) The tally sheets shall be composed of four columns:

1. The serial or I.D. number of all containers in which the load is initially placed and all subsequent containers, if any, in which the load is placed until, and including for, shipment from the buyer's premises.

2. The gross weight;

3. The tare weight of the bin or containers; and

4. The net weight of fish. Net weight will include the weight of the herring taken for testing purposes.

(B) The work or weight tally sheets shall be retained by the permittee for one year, and must be available at all times for inspection by the department.

(C) When requested by the department, the buyer shall submit to the department a California Highway Patrol weighing certificate for any truck load designated by the department. Such certificate shall be placed in the U.S. Postal system to the department's San Francisco Bay Area Marine Region office within twenty-four (24) hours of the truck's departure from the buyer's premises.

(5) In San Francisco Bay, herring may not be unloaded between the hours of

10 p.m. and 6 a.m., or at any time on Saturdays and Sundays, unless the permittee has notified and received prior approval from the department to conduct such activities during those hours.

(6) Every permittee shall comply with all applicable sections of the Fish and Game Code.

(7) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.

(8) The permit may be revoked upon violation of any provisions contained herein by the holder of the permit, his/her agents, servants, employees, or those acting under his/her direction or control and shall not be renewed for a period of one year from the date of revocation.

**NOTE**

Authority cited: Sections 1050, 5510, 8550 and 8553, Fish and Game Code.

Reference: Sections 8043, 8550, 8552.6, 8553, 8554, 8556, 8557 and 8559, Fish and Game Code.

**Section 163.5. Penalties in Lieu of Suspension or Revocation--Herring Permittees.**

(a) Pursuant to the provisions of section 309 of the Fish and Game Code and sections 163 and 746, Title 14, CCR, any permit issued pursuant to Section 8550 of the Fish and Game Code may be suspended or revoked at any time by the Commission for cause, after notice and an opportunity to be heard, or without a hearing upon conviction of the permittee or his/her substitute (pursuant to Section 163, Title 14, CCR) of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his or her herring fishing or buying privileges should be restored.

(b) Notwithstanding subsection (a), the Executive Secretary of the Commission shall enter into a stipulated compromise settlement agreement with the consent of the permittee for category I violations, and may enter into a compromise for category II violations with the consent of the permittee. The provisions of this section regarding compromise settlement agreements shall not apply if action is brought to recover civil damages under Section 2014 of the Fish and Game Code from the person subject to action under this section.

(c) Terms and Conditions of a stipulated compromise agreement may include, but are not limited to, the payment of monetary penalties, the reduction of a revocation to a suspension for a specified period of time, a period of probation

not to exceed three years or any other terms and conditions, mutually agreed upon by the Executive Secretary acting for the Commission and the permittee, without further hearing or appeal.

(d) A compromise settlement agreement may be entered before, during or after the Commission hearing on the matter, but is valid only if executed and signed by the Executive Secretary and the permittee prior to the adoption of the decision by the Commission. Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties as prescribed in subsection (f) of these regulations and shall be due and payable within 30 days after the compromise is entered into. Any and all funds submitted as payment in whole or in part by a permittee of any monetary penalties stipulated in a compromise settlement agreement shall be nonrefundable.

(e) If the permittee fails to perform all of the terms and conditions of the compromise settlement agreement, such agreement is thereby declared void and the Commission, notwithstanding the compromise settlement agreement, may take any action authorized by section 163 of these regulations against the permittee.

(f) Procedures for determining monetary penalties:

(1) Monetary penalties (score range multiplied by the monetary range) for compromise settlement agreements shall be based on the following point system:

SCORE RANGE (Total Points)	MONETARY RANGE
1-10	\$200 per point as provided in subsection (f)(2) below.
11+	\$400 per point as provided in subsection (f)(2) below.

(2) The score range shall be based on a cumulative total of the points assigned in this subsection:

(A) POINTS ASSIGNED FOR CATEGORY I VIOLATIONS ARE AS FOLLOWS:

1. Failure to properly identify vessel (Sec. 163(d)) 1 point
2. Improperly marked buoys or flags (Sec. 163(f)(2)(F)) 1 point
3. Failure to submit application for renewal of permit prior to the established deadline (Sec. 163(b)(3)) 1 point plus 1/4 point for each state working day, or portion thereof, the application is late, not to exceed the cost of a nonresident herring permit as specified in Section 8550.5, Fish and Game Code.
4. Failure of permittee to have herring permit, commercial fishing license, or boat registration aboard the permit vessel (Sec. 163, para. 1) 2 points
5. Setting or operating nets within 300 feet of specified piers and jetties (Sec. 163(f)(2)(C) and (f)(2)(E)) 3 points
6. Failure to "tend" nets (Sec. 163(f)(2)(A)) 5 points
7. Failure of herring buyer to permanently mark all vehicles, containers or

pallets (Sec. 163(j)(1))5 points

(B) POINTS ASSIGNED FOR CATEGORY II VIOLATIONS ARE AS FOLLOWS:

1. Unloading fish without recovering both nets and having them aboard vessel (Sec. 163(e)(4))6 points

2. Fishing in a closed area (Sec. 163(f)(1) and 163(f)(2)(D))12 points, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund

3. Failure to remove fishing gear from water by announced time terminating fishery operations (Sec. 163(e)(3)) 6 points, plus 1/2 point for each hour, or portion thereof, after closing time

4. Possession or use of nets with undersized mesh (Sec. 163 (f)(2)(B))12 points, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund

5. Failure to immediately return all halibut, sturgeon, salmon, steelhead and striped bass to the water (Sec. 163 (e)(6)) 10 points

6. Possession or use of extra nets or nets which exceed maximum length restrictions (Sec. (f)(2)(A)) 12 points, plus 1/2 point for every 5 fathoms of net, or portion thereof, exceed--ing maximum, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund

7. Failure of permittee or his or her temporary substitute, authorized by the department, to be aboard the vessel during herring fishing operations (Sec. 163, para 1) 10 points

8. Failure to complete and maintain weight tally sheets (Sec. 163(j)(4)) 10 points

9. Failure to immediately complete a Fish and Game receipt upon completion of weighing any load or lot of fish (Sec. 163(j)(2))15 points

(C) For each prior conviction of the permittee within the past three years for violations of the laws or regulations pertaining to the commercial take of herring:

1. The following additional points shall be assessed:

(i) For one prior conviction for a violation of the commercial herring fishing laws or regulations within the past three years, the monetary assessment shall be doubled if the total point score (points from prior violation added to points for current violation) is 10 or less, and tripled if such total point score is 11 points

or more.

(ii) For two prior convictions for violations of the commercial herring fishing laws or regulations within the past three years, the monetary assessment shall be quadrupled if the total point score (points from prior convictions added to points for current violation) is 17 or less.

2. The permit shall be revoked, or suspended for a period of at least 1 year, if the total point score is 18 points or more.

(3) Conviction of multiple violations, committed at the same time, shall be treated as one conviction for the purposes of implementing the provisions of this section.

(4) All monetary penalties for compromise agreements assessed under this section shall be deposited by the Department to the Fish and Game Preservation Fund.

**NOTE**

Authority cited: Sections 8553 and 8555, Fish and Game Code. Reference: Sections 309, 8552, 8553 and 8555, Fish and Game Code.